

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH CHAD SCHUCHMANN D/B/A SCHUCHMANN TRANSPORT D/B/A
SCHUCHMANN FARM**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as Chapter 11 trustee ("Trustee") for the bankruptcy estate ("Estate") of Eastern Livestock Co., LLC ("Debtor" or "ELC"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and Chad Schuchmann d/b/a Schuchmann Transport d/b/a Schuchmann Farm ("Schuchmann"), pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit "A" (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On January 25, 2012, the Trustee filed the Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement [Doc. No. 977] (the "Preference Protocol Motion"). The Court entered its Order Granting Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement on February 15, 2012 [Doc. No. 1035] (the "Preference Protocol Order"), pursuant to which the Court authorized the Trustee to settle the Trade Preferences¹ in the sums of the Estimated Net Exposure without further order of the Court.

4. On December 27, 2012, the Trustee commenced Adversary Proceeding No. 12-59155 against Schuchmann and filed his First Amended Complaint on February 6, 2013.

5. Schuchmann was the branch manager of ELC Branch 28 located in Bois d'Arc, Missouri and was also a vendor, supplier, customer or otherwise maintained a business relationship with ELC or its affiliates.

6. The Trustee's First Amended Complaint sought to avoid and recover for the estate alleged preferential transfers from ELC to Schuchmann in the aggregate sum of no less than \$272,726.90 and, sought, in the alternative to avoid and recover fraudulent conveyances from ELC to Schuchmann within two years of the Petition Date in the aggregate sum of no less than \$336,369.56.

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Preference Protocol Motion.

7. In addition, the First Amended Complaint sought to enforce payment on a Promissory Note executed by Schuchmann and delivered to the Debtor on or about October 1, 2005 in the principal amount of \$175,000.00; enforce payment on a Promissory Note executed by Schuchmann and delivered to Debtor on or about August 25, 2010 in the principal amount of \$450,649.05; and enforce payment on a Promissory Note executed by Schuchmann and delivered to Debtor on or about July 30, 2009 in the principal amount of \$922,597.45.

The Settlement

8. The following is a summary of the key provisions of the Settlement Agreement. Parties should refer to the Settlement Agreement for a full explanation of the proposed settlement.

9. Pursuant to the Settlement Agreement, Schuchmann shall pay to the Trustee the total sum of \$175,000.00 (one lump sum payment of \$50,000.00 with the remaining balance of \$125,000.00 paid in three (3) yearly installments) (the "Settlement Amount") in full and final settlement and satisfaction of the Released Claims, as that term is defined in the Settlement Agreement.

10. As security for payment of the Settlement Amount, Schuchmann shall execute an agreed judgment against Schuchmann and in favor of the Trustee in the amount of Two Million One Hundred Nine Thousand Eight Hundred Forty-Eight and 12/100 Dollars (\$2,109,848.12), which document will be held by counsel for the Trustee and will not be filed with the Court or recorded in any county unless and until the occurrence of an Event of Default (as defined in Section 1(b) of the Settlement Agreement).

11. In negotiation of the Settlement Agreement, the Trustee advises that, apart from assertion of defenses to the claims and to avoid the cost, expense, and delay of litigation, Schuchmann also demonstrated an inability to pay any substantial judgment against him. The collection issue ultimately became the central and overwhelming factor driving the settlement negotiations. Counsel for the Trustee performed diligent review of financial records provided by Schuchmann. Schuchmann provided unaudited personal financial statements, account statements, and other evidence as to his financial status. In addition, Schuchmann provided a sworn affidavit as to his financial condition ("Financial Disclosure Affidavit") (due to the confidential financial information, the Financial Disclosure Affidavit is redacted from the Settlement Agreement filed with this Motion). The Trustee relied on the representations in the Financial Disclosure Affidavit, and undertook to protect the interests of the Debtor's estate in the event of material omissions or misrepresentations contained in the Financial Disclosure Affidavit. To that end, Section 8 of the Settlement Agreement nullifies and voids the Settlement Agreement if the Trustee discovers that Schuchmann has made a fraudulent or otherwise a material misrepresentation concerning his financial position.

12. In accordance with the terms of the Plan, the Settlement Amount shall become part of the Recovery Fund (as that term is defined in the Estate's confirmed Chapter 11 Plan).

13. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Schuchmann pursuant to the terms and conditions set forth in the Settlement Agreement. The Trustee is seeking court approval

of the Settlement Agreement because the Settlement Amount is less than the sum of the Estimated Net Exposure as approved by the Preference Protocol Order.

Basis for Relief

14. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d at 426 (citations omitted).

15. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. It is the Trustee’s view that the estate would incur significant costs and expenses in litigating the claims against Schuchmann. Ultimately, and in reliance on the financial statements, the Financial Disclosure Affidavit, other records and evidence produced, and the Trustee’s counsel’s own investigation, the Trustee believes that the Settlement Amount represents the highest amount that the Trustee could recover and collect from Schuchmann when factoring in the costs of litigation and the financial condition of Schuchmann.

16. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit "A" and grant the Trustee all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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